UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		x		DOCUMENT ELECTRONICALLY FILED DOC#:	
JOSE M. SANTIAGO,				DATE FILED: 1/25/22	
-against-	Petitioner,			1803 (CM) 290-01 (CM)	
UNITED STATES OF AMERICA,				1	
Respondent.					
DECISION AND ORDER DENYING PETITIONER'S MOTION FILED PURSUANT 28 U.S.C. § 2255 ASKING THE COURT TO VACATE HIS 18 U.S.C. 924(c) FIREARM CONVICTION					

McMahon, J.:

On March 31, 1999, Santiago broke into a one-bedroom basement apartment in Westchester County, New York and there shot to death Efraim Torres in the presence of Torres's wife and two small children. (03/10/2000 Plea Transcript at 18:16-20:11). A self-described

member of the Latin Kings, Santiago killed Torres after having previously and unsuccessfully

attempted to take his life for stabbing another member of the Latin Kings. *Id.*

On March 10, 2000, after the Government had noticed its intent to pursue a death sentence, Santiago pleaded guilty to three counts of an indictment arising from the murder: Conspiracy To Murder In Aid of Racketeering, in violation of 18 U.S.C. § 1959(a)(5) (Count 1); Murder In Aid of Racketeering, in violation of 18 U.S.C. § 1959(a)(1) (Count 2); and Use, Carrying, and Possession of a Firearm, in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3). The predicate "crimes of violence" for Count 3 were both Count 1 and Count 2. (See Indictment at 5 (ECF. No. 62); 03/10/2000 Plea Tr. at 14:15-24). In his plea allocution before the Court, Santiago stated, "I'm a member of the Latin Kings and . . . I went . . . to kill Efraim Torres." (Id. at 20:17-19). After the Court asked, "And did you, in fact,

kill Efraim Torres?" Santiago replied, "Yes, I did." And after the Court asked in turn, "And did you do that with a nine[-]millimeter gun . . . as part of and in furtherance of the mission of the Latin Kings . . . [and] to help [] maintain or solidify your position within the Latin Kings," to each question Santiago replied, "I did." (*Id.* at 20:20-21:10).

On April 26, 2000, the Court sentenced Santiago to a term of imprisonment of 50 years, specifically comprised of 10 years on Count 1, 45 years on Count 2, and five years on Count 3, with the sentence on Count 1 to run concurrent to the sentence on Count 2 and the sentence on Count 3 to run consecutive to the sentence on Count 2.

Before the Court is Santiago's motion, filed pursuant to 28 U.S.C. § 2255, which raises one issue: Santiago contends that his conviction on Count 3 for Use, Carrying, and Possession of a Firearm, in violation of 18 U.S.C. § 924(c)(1)(A)(i), should be vacated because neither conspiracy to murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(5) nor murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(1) is a "crime of violence" under 18 U.S.C. § 924(c)'s force clause, following *United States* v. *Johnson*, 135 S. Ct. 2551 (2015), and its progeny.

Santiago's motion is denied.

Santiago's conviction on Count 3 was premised on two predicate offenses, the crimes charged in Count 1 and Count 2. In Count 2, Santiago was charged with and pleaded guilty to murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(1), which the Second Circuit Court of Appeals has held to be a categorical crime of violence under 18 U.S.C. § 924(c)(3)(A)'s force clause, where the predicate violent crime, as here, is murder in the second degree, in violation of New York Penal Law § 125.25. See United States v. Scott, 990 F.3d 94, 100 (2d Cir.), cert. denied, 142 S. Ct. 397 (2021) (After rehearing the case en banc, we reject this

reasoning, which, carried to its logical—or illogical—conclusion, would preclude courts from recognizing even intentional murder as a categorically violent crime because, presumably, it is just as possible for a defendant to cause a person's death by omission when the defendant's specific intent is to kill, *see* N.Y. Penal Law § 125.25(1) (second-degree murder), as when his specific intent is to cause serious physical injury, *see id.* § 125.20(1) (first-degree manslaughter). We decline to take the law down a path leading so far from the violent reality of these two most serious, intentionally injurious homicide crimes.).

Santiago's petition is dismissed.

The Court declines to issue a certificate of appealability because there has been no "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see United States v. Perez, 129 F.3d 255, 260 (2d Cir. 1997). Further, the Court finds, pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from an order denying Santiago's motion would not be taken in good faith. See Feliz v. United States, No. 01-cv-5544, 2002 WL 1964347, at *7 (S.D.N.Y. Aug. 22, 2002).

This constitutes the decision ar	nd order of the Court.
Dated: January 25, 2022	Celle Me Mal
Dated. January 23, 2022	

District Court Judge